SUZANNE WALSH

IBLA 85-773 Decided April 14, 1987

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, rejecting high bid oil and gas lease offer NM 059056 (OK).

Affirmed.

1. Oil and Gas Leases: Competitive Leases

   If a reasonable and factual basis for a decision rejecting a high bid appears in the record, a prima facie case justifying the rejection is established and the burden shifts to the appellant to both affirmatively show error in BLM's decision and also establish that its own bid represents the fair market value of the parcel. When an appellant fails to provide sufficient evidence and analysis to show error in the decision to overcome BLM's prima facie case, the rejection of the high bid will be affirmed.

2. Oil and Gas Leases: Competitive Leases

   If an appellant successfully challenges the basis for BLM's decision rejecting his high bid, the issue becomes whether his bid represents the fair market value of the lease because absent such a showing the Board cannot order issuance of the lease. If the evidence presented fails to show that the high bid was inadequate, the decision will be set aside and the case remanded to BLM for consideration of the evidence or, if appropriate, a hearing will be ordered. If the evidence is clearly insufficient to establish the adequacy of the bid, BLM's decision will be affirmed.

APPEARANCES: Suzanne Walsh, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Suzanne Walsh has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated July 25, 1985, rejecting for the second time her competitive oil and gas lease high bid for 35.92 acres

constituting parcel 50 at the June 20, 1984, lease sale. BLM's first rejection of appellant's bid was appealed to this Board and in examining the case file we determined that:

> While the ultimate burden is on appellant to establish that her rejected bid actually represents fair market value, where the rejected high bid is not clearly spurious or unreasonable on its face, it is the practice of the Board to remand such bid rejection in the absence of any presale evaluation and sufficient documentation in support thereof to establish its prima facie correctness. Southland Royalty Co., 83 IBLA 302 (1984); Michael Shearn, 83 IBLA 53 (1984). In readjudicating appellant's bid, BLM should, if it again determines to reject appellant's bid, provide her with an adequate basis for understanding and accepting the bid rejection or for disputing it before the Board.

Suzanne Walsh, 86 IBLA 83, 84 (1985). Accordingly, we set aside BLM's decision rejecting appellant's bid and remanded the case to BLM for further consideration.

Upon remand the case was forwarded to the economic evaluation staff for a report so that the bid could be readjudicated. The Southwest Regional Evaluation Team (SRET) returned a report and based upon it BLM issued its second decision rejecting appellant's bid.

In her statement of reasons Walsh argues that the SRET appraisal is incorrect, that discounted cash flow cannot be applied to an unproven parcel, and that her high bid out of 40 bidders present at the sale indicates that her bid should be considered adequate.

The rules governing the rejection of high bids for competitive oil and gas leases are well developed and have been summarized in almost every decision on the topic the Board has issued in recent years. See, e.g., Exxon Co., U.S.A., 85 IBLA 135 (1985). As with other appeals brought to the Board, review of a BLM decision rejecting a high bid for an oil and gas lease consists of an examination of the record forwarded by BLM and consideration of the arguments of the appellant and other parties, including briefs from the Solicitor's office. We also examine any supporting documentation submitted by the parties. Because the Board exercises the review authority of the Secretary of the Interior, 43 CFR 4.1, review of a decision on appeal is not limited to the issues presented by the parties but may include all relevant matters appearing in the record which are within the authority of the Department. Shiny Rock Mining Corp. (On Reconsideration), 77 IBLA 261, 262 (1983); United States Fish & Wildlife Service, 72 IBLA 218, 220-21 (1983); United States v. Dunbar Stone Co., 56 IBLA 61, 67-68 (1981). Our ultimate and longstanding concern is whether the decision under appeal is supported by the record. See Antoine "Fats" Domino, 7 IBLA 375, 377 (1972).

The Department is entitled to rely on the reasoned analysis of its technical experts in matters involving geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases. Exxon Co., U.S.A.,

supra at 136. When BLM relies on that analysis to reject a bid as inadequate, it must ensure that a reasoned and factual explanation of the basis for the rejection appears in the record. Southern Union Exploration Co., 79 IBLA 225, 226 (1984); Southern Union Exploration Co., 41 IBLA 81, 83 (1979). An appellant must be given some basis for understanding and accepting the rejection of its high bid or, alternatively, appealing and disputing the rejection before the Board. The explanation provided must be a part of the public record and must be adequate so that this Board can determine its correctness if disputed on appeal. Southern Union Exploration Co., 51 IBLA 89, 92 (1980), and cases cited therein.

[1, 2] If a reasoned and factual basis for the decision rejecting a high bid appears in the record, a prima facia case justifying the rejection is established and the burden shifts to the appellant to both affirmatively show error in BLM's decision and also establish that its own bid represents the fair market value of the parcel. R. T. Nakoaka, 81 IBLA 197, 200 (1984); Larry White, 81 IBLA 19, 22 n.2 (1984); Viking Resources Corp., 80 IBLA 245, 247 (1984). But see Harold Green v. Bureau of Land Management, 93 IBLA 237 (1986) (three opinions). When an appellant fails to provide sufficient evidence and analysis to show error in the decision and overcome BLM's prima facie case, the rejection of the high bid will be affirmed. J. W. McTiernan, 87 IBLA 76 (1986); Dan Nelson, 85 IBLA 156 (1985); Ronald C. Agel, 83 IBLA 76 (1984); L. B. Blake, 67 IBLA 103 (1982); Mary M. Gonzales, 67 IBLA 351, 354 (1982); William C. Welch, 60 IBLA 248 (1981). If an appellant successfully challenges the basis for BLM's decision rejecting his high bid, the issue becomes whether his bid represents the fair market value of the lease because absent such a showing the Board cannot order issuance of the lease. R. T. Nakoaka, supra at 200. If the evidence presented fails to show that the high bid was inadequate, the decision will be set aside and the case remanded for consideration of the evidence by BLM (see, e.g., Edward L. Johnson, 93 IBLA 391 (1986)). If the evidence is clearly insufficient to establish the adequacy of the bid, BLM's decision will be affirmed.

In the present case the relevant portion of the SRET report sent to the appellant states:

> The SRET has determined that the original appraisal of $500.00 per acre, or $17,960.00 total, is still valid. This appraisal is substantially above the amount bid by Ms. Walsh. Her bid was $22.55 per acre, or $810.00 total. The SRET appraisal was determined by using a discounted cash flow computer model which utilizes the "Monte Carlo" technique with 5,000 iterations. Also, the "U.S. Lease Price Report" was consulted. From these data sources the SRET determined the presale estimate of value to be as stated above. Ms. Walsh has not submitted any data for consideration which disputes our calculations.

While this portion of the report indicates that BLM's value of $500 per acre was arrived at based on consideration and analysis of relevant facts, by itself the paragraph is insufficient to support rejection of appellant's bid because it does not provide either the information that was considered in

determining the value or the method by which it was calculated. Rather, the report simply states that a discounted cash flow using a "Monte Carlo" technique was used to reach the value and that the "U.S. Lease Price Report" was consulted. Without the underlying data and analysis, we cannot conclude that a rational basis for rejecting appellant's bid does in fact exist.

The SRET report and BLM's second decision are not, however, the only documents which have been added to the case file since our previous review. In addition, the file now contains the tract evaluation prepared by SRET. It states that the tract is in Custer County, Oklahoma, in an area known as the North Canute Field which is part of the Anadarko Basin of Oklahoma and Texas. Consequently, it notes, the parcel is "in an area of relatively high potential for economic production." The evaluation also states that the current target zone is the Atoka formation, "well known to be a prolific gas reservoir with associated higher than normal pressures" and that "[t]here are no structural anomalies or depositional hiatuses characteristic to the area that would indicate the absence of the 'Atoka' under the subject tract's spacing unit * * *." The tract evaluation further states that a discounted cash-flow analysis was performed using a PW1 model which is a Monte Carlo-type computer model and production capacity data from nearby Atoka wells as well as standard parameters for such matters as drilling costs and taxes. The analysis was run at 70-, 60-, and 50-percent chances of success and the results showed values of $1,052.97, $614.50, and $176.03 per acre. Copies of the computer printouts of the analysis are included in the file. Finally, the report also notes that the U.S. Lease Price Report from Petroleum Land Data, Inc., reported lease bonuses for Custer County leases as: Low - $300/acre, High - $600/acre, and Most Common - $500/acre. Of particular interest in the report is the plat showing Atoka gas wells located in three adjoining sections of land, as well as other Atoka gas wells nearby.

It is not clear why BLM failed to send this tract evaluation to appellant along with the decision rejecting her bid. It contains the type of reasoned and factual explanation of the rejection of her bid which this Board has consistently required so that a party might either understand and accept the bid rejection or, alternatively, present its appeal to the Board. See e.g., L. B. Blake, supra. Although the report should have been sent to the appellant, given the arguments she has presented on appeal, we fail to see that at this time any purpose would be served in opening the record for further comment by the parties.

Appellant indicates that she was aware that prior to the lease sale parcels in the area were bringing $500 per acre with some getting double and triple that amount. She states that the parcel she bid on is "a good distance to the West" and that there were dry holes to the northwest and south of the parcel. Thus, appellant's information as to the potential value of the parcel was similar to BLM's. Appellant's statements also indicate that she must have been aware that her bid of $22.55 per acre was substantially below the values common to the area. She attempts to justify her lower bid by pointing to the distance of the parcel from other wells and the dry holes found in the area. While in a proper case these factors could indicate that a parcel should have a lower value than nearby parcels, in the present case they do not. The SRET

evaluation states that there are no structural abnormalities or hiatuses in the area which might suggest that the parcel at issue does not share the Atoka formation. Similarly, the fact that some wells in the area have been dry is taken into account by the variable success probabilities at which the discounted cash-flow analysis was performed. Even at a 50-percent chance of success, appellant's bid is but a small percentage of the minimum bid indicated by the analysis.

Appellant's objection to the use of a discounted cash-flow analysis is of no merit. Departmental policy is to seek to obtain fair market value for the leases it awards. See Larry White, 72 IBLA 242 (1983); Robert M. Paglee, 68 IBLA 231 (1982); Southern Union Exploration Co., 41 IBLA at 183. Cf. 43 U.S.C. § 1701(a)(9) (1982). Given this duty, some method must be used to establish a value for a parcel. Its selection cannot be arbitrary or capricious, but rather must be the result of a reasoned analysis of facts. A discounted cash-flow analysis may or may not be the best or most appropriate method for arriving at a value, but this Board recognizes that BLM is entitled to rely on the reasoned analysis of the Department's experts and their selection of the method of analysis to be used. So long as the record contains sufficient facts and a sufficiently comprehensive analysis to ensure that the decision to reject a high bid has a rational basis, the burden is on the appellant to show error in the decision. R. T. Nakoaka, supra at 200. Appellant merely argues that a discounted cash-flow method cannot be used for an unproven parcel. To the contrary, it is precisely when a parcel is unproven that use of such an analysis is necessary to determine its value. The possibility that the parcel will not be productive is included in the factors considered in reaching a value, as was done in the present case.

Finally, as the Board's opinions have frequently discussed, neither the number of bidders present at a lease sale nor the number or amount of the bids received is determinative of the fair market value of a parcel. See Ronald C. Agel, supra at 80; Viking Resources Corp., 80 IBLA 245, 247-48 (1984); Robert M. Paglee, supra at 235. For this reason, appellant's arguments based on these factors are rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Franklin D. Arness
Administrative Judge

We concur:

Anita Vogt
Administrative Judge
Alternate Member

C. Randall Grant, Jr.
Administrative Judge.